

Project Canvas – consultation response

I am replying on behalf of the Open Source Consortium (“OSC”), a UK trade body comprising SME organisations promoting the use of Free and Open Source Software (FOSS) and unencumbered open standards and providing services and support for such software and standards.

Thank you for actively seeking out OSC as a stakeholder in the consultation.

Opening Statement

Project Canvas addresses issues concerned with "digital convergence" a process by which all content is digital and becomes network agnostic.

While on the one hand the consultation restricts itself to issues concerning content, on the other hand the project envisages the potential for closing the digital divide and widening demand for broadband internet access among those that currently choose not to take it. The project and the consultation make much of the potential for a unified "open" content platform with the potential for many content providers (public service and commercial) to take advantage of common infrastructure.

The project and the consultation are at pains to point out that there is no intention to provide equipment nor become an ISP.

However, as with the original implementation of BBC iPlayer, the project fails to address the important parallel markets issue particularly associated with digital convergence, namely the effects of Project Canvas on the computing and software sector.

It does not seem correct that "digital convergence" can be discussed without consideration of this parallel markets issue.

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The general UK Government regulatory structure is unhelpful in this area. When the OSC sought to address its concerns regarding BBC iPlayer and its effects on the market for software and operating systems to the regulatory authorities, the first challenge it encountered was one of jurisdiction - was it a matter for Ofcom or for OFT? In being split across two regulators, any "digital convergence" market concerns are in danger of being fragmented and so falling below the threshold for consideration by either body whereas if the concern were considered holistically, it might be treated differently.

It is unclear to us that the BBC Trust is unable to treat matters of digital convergence in a holistic manner, and accordingly we invite the BBC Trust to widen its remit.

Background

When BBC iPlayer was first introduced, it was made available only for one version of the Microsoft Windows operating system, with the justification that such a choice provided maximum consumer reach for BBC iPlayer.

The "Microsoft Windows only" justification was considered to be the only way of assuaging content copyright holders that their copyright would be protected through the use of copy protection software "DRM" that required the use of Microsoft software.

The use of DRM was queried by many for several reasons including:

- ◆ the BBC acknowledged ease with which the technologically proficient could circumvent the DRM deployed
- ◆ more relevantly, that all the content had been previously broadcast in higher quality without DRM

That DRM was a concern for material available using a computer and software seems to confirm that the BBC understand the existence of a parallel markets issue for BBC iPlayer.

By extension, the larger project Canvas will similarly create a parallel markets issue

Frequently, and despite subsequent corrections, disparagingly, the BBC defended its decision not to launch an operating system agnostic (specifically GNU/Linux) BBC iPlayer on grounds of value for money - lack of consumer reach.

The OSC and others pointed to the tautology associated with such an approach:

- If a large and influential institution such as the BBC does not provide a heavily promoted and popular service intended for consumers for a particular platform, then it becomes a self-fulfilling prophecy that there will be no need to provide such a service for that platform, as the BBC is limiting consumer choice.

The failure of the BBC to address this issue properly is highlighted in the outcomes of the first two decisions regarding platform availability of BBC iPlayer

Subsequently to the decision to make the iPlayer available only for computers using Microsoft Windows XP, two further decisions emerged:

- provision of BBC iPlayer for the Microsoft Vista operating system
- provision of BBC iPlayer for Apple iPhone

These decisions were taken despite the “consumer reach” argument deployed for not providing BBC iPlayer for GNU/Linux or other non-Microsoft operating systems, the BBC decided to devote resources to making BBC iPlayer available for the Apple iPhone.

As with Microsoft Vista, at the point of making the decision, there was no market share for the device, accordingly it is reasonable to assume that the BBC was “calling” the market for both products rather than addressing value for money concerns.

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Further, the BBC was offering an otherwise unencumbered MPEG-4 “stream” for the Apple iPhone. This provision was made despite (as acknowledged by the BBC at a lecture given to the Institution of Engineering and Technology “IET” in May 2008) the ease with which it would be possible to capture and store the stream for future use, such provision apparently in spite of the concerns of content copyright holders.

NB: The OSC does not condone the abuse of the rights of copyright holders. The references are merely to highlight that the BBC was always aware of the ease with which the determined can abuse those rights.

Microsoft Vista is pre-installed on the majority of new consumer computer purchases accordingly it is difficult to assess the effects on the consumer market arising from the launch of BBC iPlayer only for computers supplied with Microsoft Windows software.

However the full BBC iPlayer launch was brought forward in time for Christmas 2007, and was heavily promoted as were the operating system requirements and Christmas is a key time for consumer purchases

It would have been difficult to bring forward the counterfactual argument “what would have happened if the BBC had launched a platform neutral iPlayer?”.

The launch for the Apple iPhone in March 2008 was widely promoted. Subsequently, in November 2008 and with much less publicity, the BBC relaunched its streaming iPlayer that enabled easy access by users of GNU/Linux and other platforms.

At the launch of the consultation for BBC Canvas, market statistics for iPlayer usage were presented, showing that despite the different treatment of iPlayer for iPhone and iPlayer for GNU/Linux, the BBC's own statistics showed parity of access (1%).

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If the BBC had launched iPlayer for GNU/Linux at the same time as the launch of cheap but technology capable GNU/Linux “netbooks” and with the same publicity as for the Apple iPhone what would the iPlayer market share of GNU/Linux based computers be today?

All of this must be set in the context of a Court of First Instance decision in September 2007 concerning the tying of media players to operating system systems and the potential for distortion in the market for operating systems arising from dominance in the parallel market for media players.

Project Canvas

Given the intention of Project Canvas to provide common infrastructure for all content providers there is greater potential for distorting parallel markets in software and operating systems than might arise with BBC iPlayer.

Accordingly, Project Canvas should all the application programme interfaces (“API”s) and use and publish unencumbered open standards so as to enable anyone to provide “Project Canvas ready” client solutions on any platform.

This would avoid any potential for distortion in parallel markets. Further, this would enable market solutions to some of the wider issues that the BBC seeks to address (as defined in “digital Britain” and elsewhere) including driving down the cost of closing the digital divide.

At the launch event for the consultation and at a subsequent lecture (the Appleton lecture) at the IET, the BBC made much of its history of providing freely available technology that has become a standard, (e.g., NICAM).

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At the Appleton lecture the BBC indicated that it had a desire to be liberated from the consequences of encumbered proprietary standards and technology for its own digital production and manipulation, not least on grounds of cost (It has released this technology under a Free Software licence the GNU/GPL).

The BBC seems unwilling to declare that its choice of standards and technology for Project Canvas will be similarly unencumbered. The BBC Trust should address this issue.

Although none of the foregoing was raised as issues to be addressed in the BBC Trust consultation paper, the Trust did invite such discussion:

“If there are any issues that are not highlighted in this paper that you think the Trust should consider before making a decision on Canvas, it would be helpful if you could draw these to our attention ahead of the main deadline”

I confirm that the information I have submitted is a formal consultation response. It can be published in full on the BBC Trust's website, unless otherwise specified, and I authorise the BBC Trust to make use of the information to meet its legal requirements. If I have sent my response by email the BBC can disregard any standard email text about not disclosing email contents and attachments

Gerry Gavigan, Chairman, Open Source Consortium

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